



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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REGIONAL  
ADMINISTRATOR'S  
DIVISION

January 3, 2022

Mr. Don Rotell  
Field Office Manager  
c/o Burns District BLM  
28910 Hwy 20 West  
Hines, Oregon 97738

Dear Mr. Rotell,

The U.S. Environmental Protection Agency (EPA) has reviewed the December 2, 2021, Notice of Intent (NOI) by the Bureau of Land Management (BLM), initiating the scoping process for the proposed Bridge Creek Area Allotment Management Plan Environmental Impact Statement in the Andrews Field Office, Burns District, Oregon (EPA Region 10 Project Number 21-0064-BLM). Our comments are provided pursuant to our responsibilities under the National Environmental Policy Act, the Council on Environmental Quality (CEQ) regulations (40 CFR §§ 1500-1508), and Section 309 of the Clean Air Act.

According to the NOI, the proposed Allotment Management Plans will direct livestock grazing in the 26,378-acre project area in Southeastern Oregon near the town of Frenchglen. BLM will analyze the effects of livestock grazing on Greater Sage-Grouse habitat and sagebrush ecosystems that require consultation with the Burns Paiute Tribe, U.S. Fish and Wildlife Service, private landowners, and grazing permit applicants.

The purpose of the Proposed Action is to: (1) consider 10-year term livestock grazing permits; (2) adjust pasture and allotment boundaries; (3) address availability of additional forage; and (4) reduce standing fine fuel biomass through foraging. BLM plans to implement the Proposed Action in Spring of 2023. EPA encourages BLM to develop a NEPA analysis that fully evaluates and compares project alternatives and comprehensively assesses impacts to land and water quality. The attached comments for BLM's consideration will guide EPA's review of BLM's Allotment Management Plans Draft Environmental Impact Statement slated for public review on May 22, 2022.

Thank you for the opportunity to review the scoping notice for this project. If you have questions about this review, please contact David Magdangal of my staff at (206) 553-4044 or [magdangal.david@epa.gov](mailto:magdangal.david@epa.gov), or me, at (206) 553-1774 or at [chu.rebecca@epa.gov](mailto:chu.rebecca@epa.gov).

Sincerely,

Rebecca Chu, Chief  
Policy and Environmental Review Branch

Cc: EPA Oregon Operations Office

## **EPA JANUARY 2022 DETAILED COMMENTS ON THE NOI FOR BRIDGE CREEK AREA ALLOTMENT MANAGEMENT PLANS**

### **Environmental Consequences**

40 CFR §1502.16 requires federal agencies to form the scientific and analytic basis for the comparisons of the alternatives and proposed action through a discussion pursuant to §§1502.16(a)(1)-(10). EPA recommends forming the scientific and analytic basis for the comparison of the alternatives and proposed action with the following topics.

### **Surface Water Resources**

Section 303(d) of the Clean Water Act (CWA) requires the state of Oregon (and Tribes with approved water quality standards) to identify water bodies that do not meet water quality standards and to develop water quality restoration plans to meet established water quality criteria and associated beneficial uses. Projects under the Allotment Management Plans (AMP) such as grazing activities have the potential to alter stream discharge and degrade riparian areas. The introduction of sediments to stream systems can alter thermal processes, degrade water quality, and impact stream habitat for many species including fish.

EPA's How's My Waterway shows that the project site is within an Oregon 303(d) listed impaired waterbody.<sup>1</sup> Because fish and aquatic life are impaired by water temperature in the Fivemile Lake-Donner and Blitzen River watershed, EPA recommends the AMP DEIS:

- disclose impacted waters, the nature of potential impacts, and specific pollutants likely to impact those waters;<sup>2</sup>
- report water bodies potentially affected by the AMP listed on the States and Tribes' most current EPA-approved 303(d) lists;
- describe existing restoration and enhancement efforts for impacted waters;
- describe how the AMP will coordinate with on-going water protection efforts;
- describe planned mitigation measures to avoid further degradation of water quality within impaired waters;
- describe measures to keep all livestock away from stream banks in the Lake-Donner and Blitzen River watershed;<sup>3</sup>

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<sup>1</sup> ODEQ lists the Fivemile Lake-Donner and Blitzen River watershed as a low priority for Total Maximum Daily Load development and a schedule for development is in the queue. Source development is often a step in TMDL development, so until ODEQ has been able to do more monitoring to determine all contributors, source identification is pending. For more information, visit <https://mywaterway.epa.gov/community/Frenchglen,%20OR,%20USA/aquatic-life>.

<sup>2</sup> 40 CFR §1501.3(b)(2)(iv)

<sup>3</sup> The hoof shear alone destroys the structure of the stream bank. In time, stream bank incision causes loss of bank structure and erosion. This contributes to sediment loading, causing streams to widen, and heat up much quicker.

- describe measures to implement off-stream watering for livestock such as in vats or water troughs, so livestock are not reliant on the stream; and<sup>4</sup>
- where applicable, describe how the AMP satisfies antidegradation provisions.<sup>5</sup>

### **National Pollutant Discharge Elimination System (NPDES)**

The CWA NPDES requires obtaining a permit for discharges to waters of the U.S from any construction project disturbing a land area of one or more acres. Because the AMP will direct project activities such as fence construction and removal,<sup>6</sup> EPA recommends:

- The AMP DEIS document consistency with applicable storm water permitting requirements and discuss specific mitigation measures that may be necessary or beneficial in reducing adverse impacts to water quality.

### **Section 404 of the Clean Water Act**

Under Section 404, the U.S. Army Corps of Engineers issues permits for the discharge of dredged and fill materials in waters of the U.S. EPA is responsible for oversight review of U.S. Army Corps of Engineers permits to ensure compliance with EPA's 404(b)(1) guidelines. For wetlands and other special aquatic sites, the 404(b)(1) Guidelines:

- establish a presumption that upland alternatives are available for non-water dependent activities;
- require that any permitted discharge into waters of the U.S. be the least environmentally damaging practicable alternative available to achieve the project purpose; and,
- require appropriate and practicable steps to avoid, minimize, and compensate for unavoidable impacts to aquatic resources.

Because the proposed project will include “short riparian management fences,”<sup>7</sup> EPA recommends that the AMP DEIS include an evaluation of the project alternatives within this context to support assessment of the project's compliance with the 404(b)(1) Guidelines.

### **Public Drinking Water Supplies**

The 1996 amendments to the Safe Drinking Water Act (SDWA) requires federal agencies to protect sources of drinking water for communities. Delegated state agencies responsible for conducting source

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<sup>4</sup> This best management practice will allow plants to continue to grow, shade to develop, and reduce stream bank degradation.

<sup>5</sup> Antidegradation provisions of the Clean Water Act apply to water bodies meeting water quality standards. This provision prohibits degrading the water quality unless an analysis shows that important economic and social development necessitates some degradation of water quality.

<sup>6</sup> Page 2 of the November 8, 2021 BCA EIS Scoping Invite Letter states, “The proposed range developments within the proposed action alternative currently include about 10 miles of new fence construction and about 9.7 miles of fence removal.”

<sup>7</sup> Page 2 of the November 8, 2021 BCA EIS Scoping Invite Letter states, “These modifications include short riparian management fences but are largely to realign fences along boundaries of BLM-managed public lands and privately owned lands.”

water assessments and providing a database of information about the watersheds and aquifers that supply public water systems, delineate and map federally regulated public water systems. It is possible that source water areas exist within the Bridge Creek Area and Lake-Donner and Blitzen River watershed. Livestock grazing in these areas can impact sources of drinking water for local communities by soil compaction, and release of urine and fecal matter. EPA recommends contacting the Oregon Department of Environmental Quality and affected Tribes to help identify source water protection areas within the Bridge Creek Area and Lake-Donner and Blitzen watershed and disclosing the following information in the AMP DEIS:

- AMP activities that could potentially affect source water areas;
- potential contaminants of concern to sources of public drinking water supplies; and
- mitigation measures to protect source water protection areas from AMP activities.

### **Allotment Sustainability**

Executive Order 11990 on Protection of Wetlands (May 24, 1977) requires federal agencies to provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities.<sup>8</sup> Because the NOI mentions potential effects of proposed management actions on sage-grouse habitat, sagebrush ecosystems, and riparian habitat, EPA recommends the AMP DEIS:

- discuss applicable Greater Sage-Grouse Resource Management Plans currently in effect and to what extent the proposed action meets, or does not meet, those objectives;
- describe BLM's management strategy to ensure sustainable use of rangelands;<sup>9</sup>
- describe BLM's standards for vegetation management, such as stubble height;
- describe grazing guidelines and Permittee expectations for environmental stewardship;
- describe the current quality and quantity of habitat, its use by fish and wildlife on and near grazing areas;
- identify known fish and wildlife corridors, migration routes, and areas of seasonal fish and wildlife congregation; and
- describe mitigation measures to minimize impacts to fish and wildlife, aquatic, and terrestrial habitats.

### **Biological Resources Supporting Riparian Habitat**

Executive Order 13112 on Invasive Species (February 3, 1999) requires each federal agency whose actions may affect the status of invasive species, to the extent practicable and permitted by law identify

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<sup>8</sup> <https://www.archives.gov/federal-register/codification/executive-order/11990.html>

<sup>9</sup> Page 3 of the November 8, 2021 BCA EIS Scoping Invite Letter states, "The Greater Sage Grouse Approved Resource Management Plan Amendment and Record of Decision for Oregon identified the entire project as habitat for Greater Sage Grouse. Since 1980, approximately 38,624 acres (cumulative) have been impacted by fire, with some acres burning multiple times. The burned acres have largely been within the Hammond and Mud Creek allotments."

such actions.<sup>10</sup> Because projects under the AMP may impact native and rare plants, EPA recommends the AMP DEIS:

- include maps of native and rare plant locations;
- describe BLM's policies and procedures to protect native and rare plants;
- describe BLM's policies and procedures to restore or protect native plant communities and cryptogamic crusts;
- describe BLM's policies and procedures to promote native vegetation;
- describe BLM's policies and procedures to monitor and control noxious weed;<sup>11</sup>
- describe BLMs policies and procedures to promote biodiversity in riparian habitat;
- identify endangered, threatened, and candidate species under the Endangered Species Act (ESA), and other sensitive species within the project area;
- describe the critical habitat for the ESA species;
- identify any impacts on ESA species and their critical habitats;
- describe how the AMP will meet all requirements under ESA, including consultation with the U.S. Fish and Wildlife Service (FWS) and National Oceanographic Atmospheric Administration (NOAA);
- describe BLM's policies and procedures to promote the recovery of declining populations of ESA species; and
- where applicable, describe the need to include a biological assessment and a description of the outcome of consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act.

### **Cumulative Effects**

In considering whether the effects of the proposed action are significant, 40 CFR §1501.3(b) requires federal agencies to analyze the potentially affected environment and degree of the effects of the action. Please note that according to the Federal NEPA Contacts Meeting held on March 25, 2021, the 2020 CEQ regulations do not prevent or prohibit the analysis of cumulative effects. Analyzing the project's cumulative effects will best capture impacts to human health and the environment.

As such, EPA recommends the AMP DEIS:

- use EPA's guidance for Consideration of Cumulative Impacts in EPA Review of NEPA Documents;<sup>12</sup>
- consider the effects of other past, present and future projects both in and outside the project area together with the proposed action, including those by entities that are not affiliated with BLM;
- include information showing a catalog of where and how much grazing has occurred in the project area, and the location and extent to which it is occurring now;

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<sup>10</sup> <https://www.invasivespeciesinfo.gov/executive-order-13112>

<sup>11</sup> Following grazing, invasive species can aggressively spread into newly opened areas.

<sup>12</sup> <https://www.epa.gov/sites/default/files/2014-08/documents/cumulative.pdf>

- consider how all actions together impact regional and local environmental resources;
- describe the current condition of regional and local resources as a measure of past impacts (e.g., the percentage of species habitat lost to date);
- describe a trend in the condition of regional and local resources as a measure of present impacts (e.g., the health of the resource is improving, declining, or in stasis);
- describe the future condition of regional and local resource based on an analysis of the cumulative impacts of reasonably foreseeable projects or actions added to existing conditions and current trends (e.g., the future condition of the watershed because of stream bank degradation);<sup>13</sup>
- describe how each alternative can cumulatively impact the long-term health of regional and local resources;
- disclose parties responsible for avoiding, minimizing, and mitigating those adverse impacts that contribute to cumulative impacts;
- describe opportunities to avoid and minimize cumulative impacts, including working with other entities;

## **Environmental Justice**

Assessing EJSCREEN information is a useful first step in understanding or highlighting locations that may be candidates for further review or outreach.<sup>14</sup> EPA considers a project to be in an area of potential environmental justice (EJ) concern when an EJSCREEN analysis for the impacted area shows one or more of the eleven EJ Indexes at or above the 80<sup>th</sup> percentile in the nation and/or state. At a minimum, EPA recommends an EJSCREEN analysis consider EJSCREEN information for the block group(s) which contains the proposed action(s) and a one-mile radius around those areas.

It is important to consider all impacted areas by the proposed action(s). Areas of impact can be a single block group or span across several block groups and communities.<sup>15</sup> When assessing large geographic areas, consider the individual block groups within the project area in addition to an area wide assessment. Important caveats and uncertainties apply to this screening-level information, especially in rural areas, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.<sup>16</sup> As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJSCREEN outputs.

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<sup>13</sup> For purposes of the term “reasonably foreseeable,” 40 CFR §1502.21(d) requires BLM to include impacts that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

<sup>14</sup> <https://ejscreen.epa.gov/mapper/>

<sup>15</sup> Agencies should define community as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions” (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

<sup>16</sup> <https://www.epa.gov/ejscreen/technical-documentation-ejscreen>

Further review or outreach may be necessary for the proposed action(s). To address these potential concerns, EPA recommends:

- applying the "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, to this project.<sup>17</sup> The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of EJ considerations through NEPA processes;
- characterizing project site(s) with specific information or data related to EJ concerns;<sup>18</sup>
- describing potential EJ concerns for all EJ Indexes at or above the 80<sup>th</sup> percentile in the state and/or nation;
- describing block groups which contain the proposed action and at a minimum, a one-mile radius around those areas;
- describing individual block groups within the project area in addition to an area wide assessment; and
- supplementing data with county level reports and local knowledge. This may include:
  - Limited English Proficiency Mapping<sup>19</sup>
  - Extreme Heat Vulnerability Mapping Tool<sup>20</sup>
  - Global Probabilistic Extremes Forecast Tool<sup>21</sup>
  - Resilience Analysis and Planning Tool<sup>22</sup>
  - Ground truthing through meaningful engagement with residents, community leaders, and organizations.

### **Climate Change Effects**

Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad (January 27, 2021) requires federal agencies to facilitate the organization and deployment of a Government-wide approach to combat the climate crisis. There are concerns that human activities are contributing to climate change. A continued increase in greenhouse gas will effect changes in hydrology, sea level, weather patterns, precipitation rates, and chemical reaction rates. Because livestock grazing has the potential to sequester carbon,<sup>23</sup> which may help to mitigate climate change effects, EPA recommends the AMP DEIS consider how regional and local resources affected by climate change could potentially influence the AMP and vice versa.

### **Coordination with Tribal Governments**

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<sup>17</sup> [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf)

<sup>18</sup> For more information about potential EJ concerns, refer to the July 21, 2021 Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative. <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

<sup>19</sup> <https://www.lep.gov/maps/lma2015/Final>

<sup>20</sup> <https://nihhis.cpo.noaa.gov/vulnerability-mapping>

<sup>21</sup> <https://www.cpc.ncep.noaa.gov/products/predictions/threats/extremesTool.php>

<sup>22</sup> <https://www.fema.gov/emergency-managers/practitioners/resilience-analysis-and-planning-tool>

<sup>23</sup> For example, converting from continuous to rotational grazing system may keep forage plants in an actively growing state, which would increase photosynthesis rates at higher levels and allowing the forages to sequester more carbon.

Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments (November 6, 2000) requires federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the U.S. government-to-government relationships with Indian tribes. Because the area is of interest to the Burn Paiute Tribe, EPA recommends the AMP DEIS:

- describe project impacts to the Burns Paiute Tribe's resources; and
- describe the process of government-to-government consultation(s) between BLM and each tribal government involved and, with concurrence from the tribal government, the outcome, any issues raised, and issue resolution.

### **Monitoring and Adaptive Management**

Monitoring is fundamental for ensuring the implementation and effectiveness of mitigation commitments, meeting legal and permitting requirements, and identifying trends and possible means for improvement. Under NEPA, federal agencies have a continuing duty to consider the latest information about the environmental impact of its proposed action.<sup>24</sup> Because projects under the AMP have the potential to impact a variety of resources for an extended period, EPA recommends the AMP DEIS:

- describe an environmental inspection and mitigation monitoring program to ensure compliance with all mitigation measures and assess their effectiveness;<sup>25</sup>
- describe how BLM will use the monitoring program as an effective feedback mechanism to adjust projects under the AMP to meet environmental objectives throughout the life of the proposed grazing; and
- describe actions on stream bank mitigation and publish the results that quantify mitigation effectiveness.<sup>26</sup>

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<sup>24</sup> [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation\\_and\\_Monitoring\\_Guidance\\_14Jan2011.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf).

<sup>25</sup> For activities involving third parties (e.g., permittees), it may be appropriate to require the third party to perform the monitoring as long as a clear accountability and oversight framework is established. Reference: [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation\\_and\\_Monitoring\\_Guidance\\_14Jan2011.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf).

<sup>26</sup> 40 CFR §1505.2(a)(3) requires federal agencies to state whether the agency has adopted all practicable means to avoid or minimize environmental harm from the alternative selected, and if not, why the agency did not. Federal agencies shall adopt and summarize, where applicable, a monitoring and enforcement program for any enforceable mitigation requirements or commitments.